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ARIZONA ATTORNEY GENERAL

July 1, 1949

TO : J. Melvin McCaskey
FROM: R. G. Langmade

RE: Bids to furnish steel to be
used in the Arizona State
Prison in the manufacture
Arizona Number Plates

Responding to your memorandum, submitting the various bids to supply the steel for the manufacture of license plates by the prison:

Particular reference is directed to the two low bids, viz., Kaiser Company, Inc., of \$14,072.30, and the Smith Pipe and Steel Company's bid of \$14,498.00.

Other factors being satisfactory, the Kaiser Company, Inc. is entitled to be awarded the contract as being the lowest responsible bidder.

Mr. Goodwin invites attention to Section 56-109, which gives a preference to certain dealers and bidders. This section, among other things, provides that when a resident dealer bids upon contracts for furnishing material to the State, they shall be entitled to a preference when the quality and suitability of the material is satisfactory and the bid shall not exceed 5 per cent of the lower bid.

There are several reasons why the Smith Pipe and Steel Company bid should not be considered a better bid, or entitled to the preference, first, because there is no claim by the bidder that he comes within the meaning of Section 56-109; second, the bidder failed to comply with the call for bids, in furnishing a sample of the stock; third, the bid required 25 per cent of the material ordered to be delivered on or before August 1, and the Smith Pipe and Steel Company would not accept this condition or agree to furnish within the time called for by the bid. The Superintendent advises that the time element is imperative and of the essence of delivery, because of the necessity of immediately producing license plates for the delivery date.

The 5 per cent preference, provided for in Section 56-109, is only for bidders whose material is supplied by a resident dealer who has paid state and county taxes for not less than two years prior to the bid "on a stock of materials of the kind so offered to be supplied reasonably sufficient to supply the purchases of his customers from said stock, instead of from stock shipped into the state to fill orders previously taken".

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The letter of transmittal of the bid contains the following statement:

"Because this specification of material is a production item, true and exact samples are not available until order is placed, produced and shipped".

There is no claim made by the Smith Pipe and Steel Company that they carry a stock of materials of the kind upon which they bid, upon which they pay taxes in Arizona.

It is therefore apparent that the Smith Pipe and Steel Company is not entitled to an award of the contract, because of Section 56-109 giving the preference to local dealers.

R. G. LANGMADE
Assistant Attorney General